

**THE DISTRICT OF COLUMBIA
ALCOHOLIC BEVERAGE CONTROL BOARD**

In the Matter of:)	
)	
Connexion Group, LLC)	Case No.: 18-CMP-00142
t/a 1230 DC)	License No.: ABRA-100537
)	Order No.: 2019-045
Holder of a)	
Retailer's Class CR License)	
)	
at premises)	
1230 9th Street, N.W.)	
Washington, D.C. 20001)	

BEFORE: Donovan Anderson, Chairperson
Nick Alberti, Member
Mike Silverstein, Member
James Short, Member
Bobby Cato, Member
Rema Wahabzadah, Member

ALSO PRESENT: Jessica Gunzel and Amy Schmidt, Assistant Attorneys General
Office of the Attorney General for the District of Columbia

Martha Jenkins, General Counsel
Alcoholic Beverage Regulation Administration

**FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND ORDER**

INTRODUCTION

The Alcoholic Beverage Control Board (Board) finds that Connexion Group, LLC, t/a 1230 DC, (hereinafter "Respondent" or "1230 DC") violated D.C. Official Code §§ 25-823(a)(7), 25-701, and 25-113a when on April 28, 2018, it violated its Board approved hours of operation by operating past 2:00 a.m., violated its Board approved capacity; illegally operated a summer garden on its roof without Board approval, and illegally charged a cover charge without the proper endorsement. In light of these offenses, the Board issues a \$6,000 fine and issues a warning for the cover charge violation.

Procedural Background

This case arises from the Notice of Status Hearing and Show Cause Hearing (Notice), which the Board executed on September 6, 2018. *ABRA Show Cause File No. 18-CMP-00142*, Notice of Status Hearing and Show Cause Hearing, 2 (Sept. 6, 2018). The Alcoholic Beverage Regulation Administration (ABRA) served the Notice on the Respondent, located at premises 1230 9th Street, N.W., Washington, D.C., on September 8, 2018. *ABRA Show Cause File No. 18-CMP-00142*, Service Form. The Notice charges the Respondent with multiple violations, which if proven true, would justify the imposition of a fine, as well as the suspension or revocation of the Respondent's license.

Specifically, the Notice charges the Respondent with the following violations:

- Charge I:** [On April 28, 2018,] [y]ou failed to follow the terms of your Board-approved license by exceeding capacity, in violation of D.C. Official Code § 25-823(a)(7)
- Charge II:** [On April 28, 2018,] [y]ou failed to superintend in person or keep a Board-approved ABC manager on duty during your establishment's licensed hours of sales, in violation of D.C. Official Code § 25-701 . . . 23 DCMR § 707.1
- Charge III:** [On April 28, 2018,] [y]ou failed to comply with the terms of your license by operating outside the approved hours of sale in violation of D.C. Official Code § 25-723(b) . . . , for which the Board may take the proposed action pursuant to D.C. Official Code § 25-82[3](a)(1) and (7).
- Charge IV:** [On April 28, 2018,] [y]ou charged a cover charge for entry without the proper endorsement, in violation of D.C. Official Code § 25-113a(b)(1) . . . 23 DCMR § 1002.1
- Charge V:** [On April 28, 2018,] [y]ou operated a summer garden without the proper endorsement in violation of D.C. Official Code § 250113a(c) . . . and 23 DCMR § 1004.1

Notice of Status Hearing and Show Cause Hearing, 2-5.

Only the Government appeared at the Show Cause Status Hearing on October 17, 2018. The Respondent failed to appear at the Show Cause Hearing on November 28, 2018, and the Government proceeded ex parte in accordance with D.C. Official Code § 25-447.

FINDINGS OF FACT

The Board, having considered the evidence, the testimony of the witnesses, the arguments of the parties, and all documents comprising the Board's official file, makes the following findings:

1. The Respondent, 1230 DC, holds a Retailer's Class CR License at 1230 9th Street, N.W., Washington, D.C. *ABRA License No. 100537.*
2. On April 28, 2018, ABRA Supervisory Investigator Mark Brashears received a call from the Metropolitan Police Department (MPD) reporting that large crowds were congregating in front of the Respondent's establishment. *Transcript (Tr.)*, November 28, 2018 at 10-11. MPD further requested that ABRA provide assistance. *Id.* at 11.
3. Supervisory Investigator Brashears arrived around 1:15 a.m., and was informed by police officers at the scene that they believed the Respondent's establishment was overcrowded. *Id.* at 12, 20. Police officers further informed the supervisory investigator that the establishment had advertised that the event would last until 3:30 a.m. *Id.* at 34. Investigator Brashears attempted to enter, but chose to remain outside because the establishment was too crowded at that time. *Id.* at 13.
4. An employee indicated that they would retrieve the licensed manager to speak to Supervisory Investigator Brashears outside the establishment. *Id.* An unidentified male came outside and identified himself as the owner. *Id.* at 14. Nevertheless, the man indicated that he was not listed on any corporate documents as the owner of the Respondent's business. *Id.*
5. Supervisory Investigator Brashears and an investigator with the District of Columbia Department of Consumer and Regulatory Affairs then entered the premises. *Id.* Supervisory Investigator Brashears observed that the premises were very crowded as he made his way through the establishment. *Id.* at 15. He further observed that patrons were standing and drinking alcohol on the Respondent's rooftop deck on the second floor. *Id.* at 15-16.
6. The investigative team left the premises and a male identifying himself as the licensed manager approached. *Id.* at 16-17. Nevertheless, the male did not possess a manager's license issued by ABRA but provided his driver's license. *Id.* at 16. The man indicated that the establishment was collecting money for a "benefit." *Id.* at 26. Later, upon returning to ABRA, Investigator Brashears looked up the man's information and observed that he was issued a temporary manager's license that had expired and was no longer active. *Id.* at 17.
7. The man identifying himself as a manager brought out the establishment's Certificate of Occupancy (COO) and liquor license. *Id.* at 17. According to the liquor license, the establishment's hours of operation and sales ended at 2:00 a.m. *Id.* at 19. The liquor license indicated that occupancy of the premises was capped at 111 persons. *Id.* The liquor license also solely had an endorsement for entertainment, but did not possess an endorsement allowing the Respondent to charge a cover charge or an endorsement allowing for a summer garden. *Id.* at 19, 32.

8. Outside the establishment, the supervisory investigator observed an admission line outside the Respondent's building. *Id.* People in the crowd informed the supervisory investigator that they were being charged between \$40 and \$60 for admission. *Id.* at 19-20.
9. A licensed manager arrived at the premises around 1:50 a.m. *Id.* at 21. The manager claimed that he had been away obtaining ice. *Id.*
10. At 2:30 a.m., the supervisory investigator went back inside the Respondent's premises. *Id.* at 22. Inside, he observed patrons still consuming alcohol. *Id.* at 22, 27-28. He also observed a cash box near the entrance. *Id.* at 24-26.
11. After the supervisory investigator informed the manager of potential violations, the manager began sending people outside. *Id.* at 23. At this time, police, the DCRA investigator, and the supervisory investigator began counting patrons exiting the premises. *Id.* In total, the supervisory investigator counted approximately 270 persons exiting the premises. *Id.* at 23.

CONCLUSIONS OF LAW

12. The Board has the authority to fine, suspend, or revoke the license of a licensee who violates any provision of Title 25 of the District of Columbia (D.C.) Official Code pursuant to D.C. Code § 25-823(a)(1).

I. Standard of Proof

13. In this matter, the Board shall only base its decision on the "substantial evidence" contained in the record. 23 DCMR § 1718.3 (West Supp. 2019). The substantial evidence standard requires the Board to rely on "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Clark v. D.C. Dep't of Employment Servs.*, 772 A.2d 198, 201 (D.C. 2001) *citing Children's Defense Fund v. District of Columbia Dep't of Employment Servs.*, 726 A.2d 1242, 1247 (D.C.1999).

II. The Respondent Violated its Occupancy in Violation of § 25-823(a)(7).

14. Under § 25-823(a)(7), a licensee must "follow the terms of its license." D.C. Official Code § 25-823(a)(7). In this case, the Respondent's premises was limited to 111 persons by the terms of its liquor license, but on April 28, 2018, the supervisory investigator counted approximately 270 persons inside, which exceeded the Respondent's capacity. *Supra*, at ¶¶ 7, 11. Therefore, the Board sustains Charge I.

III. The Respondent Failed to Have a Licensed Manager Present While in Operation in Violation of § 25-701.

15. Under § 25-701, "A person designated to manage an establishment shall possess a manager's license." D.C. Code § 25-701(a). Furthermore, under the regulations, "In the absence of a licensee, a Board approved manager shall be present at the licensed premises during the hours that alcoholic beverages are permitted to be sold, served, or consumed on the licensed premises." 23

DCMR § 707.1 (West Supp. 2019). In this case, on April 28, 2018, no owner or person with a valid manager's license was present while the establishment was in operation between 1:15 a.m. and 1:50 a.m. *Supra*, at ¶¶ 3-4, 6, 9. Under these circumstances, the Board sustains Charge II.

IV. The Respondent Exceeded its Hours of Operation and Sale in Violation of § 25-723.

16. Under § 25-823(a)(7), a licensee must “follow the terms of its license.” D.C. Official Code § 25-823(a)(7). In this case, the Respondent's license ended its hours of operation and sale at 2:00 a.m.; yet, patrons were still inside the premises consuming alcohol at 2:30 a.m. on April 28, 2018. *Supra*, at ¶¶ 5, 7. Under these circumstances, the Board sustains Charge III.

V. The Board Issues a Warning for Charge IV.

17. The Board issues a warning for Charge IV based on the minor nature of the violation and the Respondent's prior history of violations.

VI. The Respondent Operated a Summer Garden Without Approval in Violation of § 25-113a.

18. Under § 25-113a(c), an on-premise retail licensee shall obtain an endorsement on its license before the licensee operates an outdoor summer garden. D.C. Code § 25-113a(c); 23 DCMR § 1004.1 (West Supp. 2019). In this case, on April 28, 2019, the supervisory investigator observed patrons drinking on the Respondent's second floor rooftop deck; yet, the Respondent had never received a summer garden endorsement on its license. *Supra*, at ¶ 5. Under these circumstances, the Board sustains Charge IV.

VII. Penalty

19. ABRA's records indicate that the current violations represent first level primary tier and secondary tier violations. The fine range for a first time primary tier offense falls between \$1,000 and \$2,000, while the fine range for a first time secondary offense falls between \$250 and \$500. 23 DCMR §§ 801, 802 (West Supp. 2019).

ORDER

Therefore, the Board, on this 30th day of January 2019, finds Connexion Group, LLC, t/a 1230 DC, guilty of violating D.C. Official Code §§ 25-823(a)(7), 25-701, and 25-113a. The Board imposes a total fine of \$6,000, which shall be distributed amongst the charges as follows:

- (1) For the violation described in Charge I, 1230 DC shall pay a fine of \$2,000.
- (2) For the violation described in Charge II, 1230 DC shall pay a fine of \$500.
- (3) For the violation described in Charge III, 1230 DC shall pay a fine of \$1,500.
- (4) For the violation described in Charge IV, 1230 DC shall receive a **WARNING**.

(5) For the violation described in Charge V, 1230 DC shall pay a fine of \$2,000.

IT IS FURTHER ORDERED that the Respondent must pay all fines imposed by the Board within thirty (30) days from the date of this Order, or its license shall be immediately suspended until all amounts owed are paid.

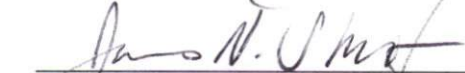
IT IS FURTHER ORDERED, in accordance with 23 DCMR § 800.1, the violations found by the Board in this Order shall be deemed three primary tier violations and one secondary tier violation.

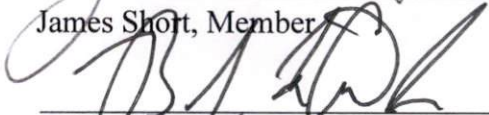
IT IS FURTHER ORDERED that the Board's findings of fact and conclusions of law contained in this Order shall be deemed severable. If any part of this determination is deemed invalid, the Board intends that its ruling remain in effect so long as sufficient facts and authority support the decision.

The ABRA shall deliver copies of this Order to the Government and the Respondent.

District of Columbia
Alcoholic Beverage Control Board


Donovan Anderson, Chairperson

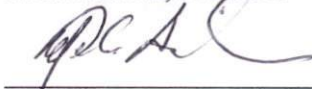

James Short, Member


Bobby Cato, Member

Rema Wahabzadah, Member

I concur with the majority of the Board's determination as to liability, but dissent with the penalty determination. I would impose three stayed suspension days on the licensee in order to ensure compliance in the future.


Nick Alberti, Member


Mike Silverstein, Member

Pursuant to D.C. Official Code § 25-433(d)(1), any party adversely affected may file a Motion for Reconsideration of this decision within ten (10) days of service of this Order with the Alcoholic Beverage Regulation Administration, Reeves Center, 2000 14th Street, NW, 400S, Washington, D.C. 20009.

Also, pursuant to section 11 of the District of Columbia Administrative Procedure Act, Pub. L. 90-614, 82 Stat. 1209, D.C. Official Code § 2-510 (2001), and Rule 15 of the District of Columbia Court of Appeals, any party adversely affected has the right to appeal this Order by filing a petition for review, within thirty (30) days of the date of service of this Order, with the District of Columbia Court of Appeals, 430 E Street, N.W., Washington, D.C. 20001; (202-879-1010). However, the timely filing of a Motion for Reconsideration pursuant to 23 DCMR § 1719.1 stays the time for filing a petition for review in the District of Columbia Court of Appeals until the Board rules on the motion. *See* D.C. App. Rule 15(b) (2004).